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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

## SAN FRANCISCO DIVISION

AUDLEY BARRINGTON LYON, JR., et. al.,

Case No.: 13-cv-05878 EMC

#### **Plaintiffs.**

V.

UNITED STATES IMMIGRATION AND  
CUSTOMS ENFORCEMENT, et al.,

## **JOINT CASE MANAGEMENT STATEMENT**

## Defendants

Date: February 12, 2015  
Time: 10:30 a.m., Courtroom 5  
Judge: Hon. Edward M. Chen

1       The parties to this action, Plaintiffs Audley Barrington Lyon, Jr., José Elizandro Astorga-  
2 Cervantes, Lourdes Hernandez-Trujillo, and the certified class they represent (collectively  
3 “Plaintiffs”), by and through their attorneys of record, and Defendants United States Immigration  
4 and Customs Enforcement (“ICE”); Sarah Saldaña, Director, ICE<sup>1</sup>; United States Department of  
5 Homeland Security (“DHS”); Jeh Johnson, Secretary of DHS; and Timothy Aitken, Field Office  
6 Director for the ICE Enforcement and Removal Operations (“ERO”) Field Office in San  
7 Francisco (collectively “Defendants”), by and through their attorneys of record, have met and  
8 conferred as required by Federal Rules of Civil Procedure Rule 26(f), and based thereon, jointly  
9 submit this report in compliance with this Court’s Standing Order for All Judges of the Northern  
10 District of California.

11 **I. JURISDICTION**

12       This Court has subject-matter jurisdiction over this matter under 28 U.S.C. § 1331 (federal  
13 question), 28 U.S.C. §§ 2201 and 2202 (declaratory relief), and 5 U.S.C. §706 (waiver of  
14 sovereign immunity). Plaintiffs allege that venue is proper in the Northern District of California  
15 under 28 U.S.C. §§ 1391(b) and (e) because a substantial part of the events and omissions giving  
16 rise to Plaintiffs’ claims occurred, and continues to occur, in this District. Defendants deny that  
17 venue is proper in the Northern District of California for members of the class detained in the Rio  
18 Cosumnes Correctional Facility in Sacramento County, California (the “Elk Grove Facility”); the  
19 Elk Grove Facility is located in the Eastern District of California. All parties have been served.

20 **II. BACKGROUND FACTS**

21       At the time the lawsuit was filed, the individual Plaintiffs were immigrants held in ICE  
22 custody in connection with proceedings seeking to remove them from the United States. Plaintiff  
23 Lyon remains in ICE custody at the West County Detention Center in the city of Richmond,  
24 Contra Costa County, California (the “Richmond Facility”). Plaintiff Astorga-Cervantes was  
25 previously held in ICE custody at the Elk Grove Facility in the Eastern District of California

27       <sup>1</sup> Sarah Saldaña, Director, ICE, is substituted under Fed. R. Civ. P. 25(d)for former Acting  
28 Director, John Sandweg, who was named as a defendant in this action in his official capacity but  
resigned from this position effective February 21, 2014.

1 pending his removal proceedings; Astorga-Cervantes posted bond and was released from  
2 immigration detention on February 20, 2014. Plaintiff Hernandez-Trujillo was previously  
3 detained at both the Sacramento Main Jail (which was the predecessor facility used by  
4 Sacramento County to house ICE detainees) and the Yuba County Jail (the “Yuba Facility”) prior  
5 to being released on an order of supervision on April 4, 2014.<sup>2</sup> ICE does not itself operate any of  
6 the three facilities at issue in this litigation, but contracts with the facilities for immigration  
7 detention space. ICE has entered into separate Intergovernmental Service Agreements (“IGSA”)  
8 with the Sacramento County and the Yuba County to house immigration detainees. ICE is  
9 recognized as an authorized user to the Intergovernmental Agreement (“IGA”) between the U.S.  
10 Marshall’s Service and the Contra Costa County.

11 On December 19, 2013, Plaintiffs filed a class action complaint for declaratory and  
12 injunctive relief based on alleged violations of constitutional and federal statutory rights,  
13 including rights to be represented by and consult with counsel, gather and present evidence,  
14 obtain due process and a fair hearing in their removal proceedings and petition government  
15 agencies for information and redress of grievances pursuant to the First Amendment. *See ECF*  
16 No. 1. On February 21, 2014, Defendants answered the Complaint, denying Plaintiffs’  
17 allegations of wrongdoing, challenging venue for all claims asserted by class members detained  
18 in the Eastern District of California, and challenging Plaintiffs’ ability to satisfy the prerequisites  
19 of Federal Rule of Civil Procedure 23 to maintain their class action. *See ECF No. 24.* The key  
20 factual issues in dispute center on whether Defendants’ practices and policies related to telephone  
21 access at the detention facilities in which Plaintiffs are or were held violate Plaintiffs’  
22 constitutional and statutory rights in connection with proceedings to remove them from the  
23 United States, and Defendants’ asserted bases and justifications for those policies and practices.

24 Following oral argument on Plaintiffs’ motion for class certification on April 10, 2014, the

25  
26 <sup>2</sup> Defendants served initial discovery requests on Plaintiffs, including Plaintiff Cornelio, on  
27 October 23, 2014. Plaintiff Cornelio has neither responded to those discovery requests nor sought  
28 an extension of time in which to respond. Plaintiffs’ counsel has been unable to communicate  
with Plaintiff Cornelio. Accordingly, on February 4, 2015, Plaintiffs filed a Joint Stipulation of  
Voluntary Dismissal of Plaintiff Cornelio. *See ECF Nos. 70-71.*

Court certified the class as proposed by Plaintiffs on April 16, 2014. *See* ECF Nos. 30 & 31. The Court held an initial case management conference on July 10, 2014, and issued a Case Management and Pretrial Order for Bench Trial the following day. *See* ECF Nos. 46-47. Plaintiffs served their initial discovery requests on July 11, 2014. The parties agreed to stay discovery from August 15, 2014 to October 9, 2014, to allow the parties to focus exclusively on settlement discussions, but otherwise continue to actively exchange information through the formal discovery process.

### **III. LEGAL ISSUES**

The primary legal issues in this case are whether Defendants' policies and practices relating to telephone access at the facilities in which Plaintiffs are or were held in ICE custody violate Plaintiffs' rights to retain and consult counsel, to gather and present evidence, to petition the government for redress of grievances pursuant to the First Amendment's Petition Clause and to obtain a fair hearing under the Fifth Amendment Due Process Clause and 8 U.S.C. §§ 1362, 1229a(b)(4)(A) and 1229a(b)(4)(B). Plaintiffs contend the analysis will require the interpretation and application of statutory protections and the balancing of the Plaintiffs' constitutional and statutory interests with the Defendants' reasons for restricting and denying telephone access, including an evaluation of alternatives to the current system.

### **IV. MOTIONS**

There are no pending motions at this time. The Parties expect to file motions for summary judgment, as well as other motions, including discovery motions, as necessary.

### **V. AMENDMENT OF PLEADINGS**

Plaintiffs anticipate amending the pleadings to substitute some of the named Plaintiffs in this action. Plaintiffs do not intend to amend the pleadings to assert additional causes of action or add any new defendants.

### **VI. EVIDENCE PRESERVATION**

The Parties certify that they have reviewed the Guidelines Relating to the Discovery of Electronically Stored Information and confirm that the Parties have met and conferred pursuant to

1 Federal Rule of Civil Procedure 26(f) regarding reasonable and proportionate steps taken to  
2 preserve evidence relevant to the issues reasonably evident in this action.  
3

4 **VII. DISCLOSURES**

5 The Parties exchanged their initial disclosures under Federal Rule of Civil Procedure  
6 26(a) on April 3, 2014.  
7

8 **VIII. DISCOVERY**

9 In addition to their initial disclosures and confidential informal discovery solely related to  
10 settlement discussions, the Parties continue to conduct discovery in this action. Pursuant to Rule  
11 26(f) of the Federal Rules of Civil Procedure, the Parties submit the following discovery plan.  
12

13 a. At this time, the Parties do not foresee the need to change the timing, form, or  
14 requirement for disclosures under Rule 26(a) of the Federal Rules of Civil Procedure.  
15

16 b. Plaintiffs have sought and will continue to seek discovery that focuses on, among  
17 other things, matters regarding Defendants' policies and practices regarding Plaintiffs' telephone  
18 access, including but not limited to (i) the effects of those policies and practices on the ability of  
19 Plaintiffs to retain and consult with counsel, (ii) the effects of those policies and practices on the  
20 ability of Plaintiffs to obtain evidence and present evidence in connection with their removal  
21 proceedings; (iii) the effects of those policies on the ability of Plaintiffs to obtain documents,  
22 information and visas from government agencies and others in connection with efforts to obtain  
23 relief from removal; (iv) the negotiation, monitoring and enforcement of the contracts pursuant to  
24 which Plaintiffs are held in ICE custody, (v) the promulgation and enforcement of the  
25 Defendants' Detention Standards; (vi) whether the policies and practices denying and restricting  
26 telephone access to Plaintiffs conform to Defendants' Detention Standards or the contracts  
27 pursuant to which Plaintiffs and the proposed class are held in ICE custody; (vii) the rationale and  
28 alleged justification for Defendants' telephone access policies and practices; (viii) alternatives to  
Defendants' policies and practices sufficient to remedy the alleged violations of Plaintiffs'  
statutory and constitutional rights. Plaintiffs do not believe that discovery should be conducted in  
phases or be limited to or focused on particular issues.

1                   c. Defendants have sought and anticipate continuing to seek discovery related, but  
2 not limited, to the following: (i) the named Plaintiffs' continued ability to represent the class; (ii)  
3 the named Plaintiffs' requests, both formal and informal, to access a telephone while held in  
4 immigration detention; (iii) any complaints or grievances asserted by the named Plaintiffs to any  
5 immigration officers or the detention facilities while in immigration detention regarding  
6 Defendants' policies and practices related to telephone access; (iv) any differences in experiences  
7 amongst the named Plaintiffs between the three facilities regarding telephone access; (v) any  
8 actual harm suffered by the Plaintiffs caused by Defendants' policies and/or practices related to  
9 telephone access, including any allegations that any policies and/or practices precluded and/or  
10 interfered with Plaintiffs' attempts to secure counsel and/or defend themselves against charges of  
11 removal; (vi) any alternative means for immigration detainees to place legal phone calls other  
12 than those means ordinarily provided to the general prison population or for non-legal phone  
13 calls; and (vii) any alternative means for immigration detainees to communicate with counsel  
14 and/or persons necessary to prepare a defense to charges of removal other than the telephone  
15 system available to the general population at each of the three facilities.

16                   d. The Parties do not anticipate any issues regarding electronically stored information  
17 in this action. Should e-discovery become an issue, the Parties will work on a mutually agreeable  
18 plan regarding the form in which electronically stored data should be produced, and only involve  
19 the Court as a last resort. The Parties have considered entering into a stipulated e-discovery  
20 order, but have decided that such an order is unnecessary.

21                   e. The Parties filed and the court signed a stipulated protective order to govern the  
22 production of documents on January 13, 2015. *See* ECF No. 67.

23                   f. At this time, the Parties do not believe any changes to the limitations on discovery  
24 imposed by the Federal Rules of Civil Procedure or by local rule will be necessary, and reserve  
25 the right to request them in the future, if necessary.

26                   g. The Parties propose amending the schedule for discovery set forth in the Court's  
27 July 11, 2014 Case Management and Pretrial Order for Bench Trial (*see* ECF No. 47). The  
28

1 parties have been engaged in settlement discussions, and had agreed to a temporary stay of  
2 discovery in this matter during part of those discussions. As a result of that temporary stay, the  
3 parties seek additional time to complete necessary discovery in this action and have agreed to  
4 propose the revised case schedule set forth in Section XVII *infra*.

5 h. The requested timing of the disclosure of expert witnesses and information  
6 required by Rule 26(a)(2)(D) is discussed in Section XVII *infra*.

7 **IX. CLASS ACTIONS**

8 The Court certified a class of “all current and future immigration detainees who are or will  
9 be held by ICE in Contra Costa, Sacramento, and Yuba Counties.” *See* ECF No. 31.

10 **X. RELATED CASES**

11 There are no related cases or proceedings pending before this Court or any other court or  
12 administrative body.

13 **XI. RELIEF**

14 Plaintiffs seek declaratory relief, injunctive relief, and attorney’s fees and costs.

15 **XII. SETTLEMENT AND ADR**

16 Magistrate Judge Ryu has presided over ongoing settlement communications in this  
17 matter. The Parties attended several settlement conferences, including conferences at the three  
18 jails where class members are housed, participated in telephonic settlement conferences, and  
19 exchanged written settlement proposals from June to October, 2014. *See* ECF Nos. 43, 50, 52,  
20 55, 58, 59. Defendants plan to submit a written statement of their settlement position to Plaintiffs  
21 on February 9, 2015. *See* ECF No. 61.

22 **XIII. CONSENT TO MAGISTRATE JUDGE FOR ALL PURPOSES**

23 The Parties do not consent to have a magistrate judge conduct all further proceedings,  
24 including trial and entry of judgment.

25 **XIV. OTHER REFERENCES**

26 The Parties agree that this case is not suitable for reference to binding arbitration, a special  
27 master, or the Judicial Panel on Multidistrict Litigation.

1      **XV. NARROWING OF ISSUES**

2            It is still premature to determine whether any issue can be narrowed. The Parties are  
3            willing to meet and confer again to ascertain whether issues can be narrowed by agreement, after  
4            discovery has been completed.

5      **XVI. EXPEDITED SCHEDULE**

6            The Parties agree that this case is not suitable for expedited trial pursuant to the Expedited  
7            Trial Procedure of General Order No. 64.

8      **XVII. SCHEDULING**

9            For the reasons set forth in Section VIII.g. *supra*, the Parties propose the following  
10          amended schedule for discovery, designation of experts, motions, pretrial conference, and trial.  
11          This is the parties' first request for an amendment to the schedule set forth in the Court's Case  
12          Management and Pretrial Order for Bench Trial (ECF No. 47).

	Current Schedule	Proposed Schedule
Initial Disclosures	April 3, 2014	April 3, 2014
Fact Discovery Cutoff	May 14, 2015	July 14, 2015
Expert Disclosure and Exchange of Opening Reports	May 28, 2015	July 28, 2015
Rebuttal Expert Disclosure and Exchange of Rebuttal Expert Reports	June 18, 2015	August 18, 2015
Expert Discovery Cutoff	July 9, 2015	September 9, 2015
Last Day to Hear Dispositive Motions	August 27, 2015	October 29, 2015
Last Day to File and Serve Joint Pretrial Statement	October 6, 2015	December 15, 2015
Final Pretrial Conference	October 27, 2015	January 5, 2016
Trial Date	November 16, 2015 <sup>3</sup>	January 25, 2016

26  
27           <sup>3</sup> Defendants note that trial days no. 5-8 (Nov. 23-25, 27) are currently scheduled to occur the  
28            week of Thanksgiving. Because Defendants' counsel work and reside in Washington, D.C.,  
Defendants respectfully request that – if the Court does not amend the case management schedule  
as the parties request – the Court please consider rescheduling trial days no. 5-8 (Nov. 23-25, 27).

1      **XVIII. TRIAL**

2      Plaintiffs estimate that the Court trial of this matter will last 10-14 days. Defendants  
3      believe that – if this matter cannot be settled between the parties – this case will be ripe for  
4      decision on motions for summary judgment, rendering trial unnecessary. Plaintiffs do not agree  
5      that the asserted claims can be resolved on summary judgment.

6      **XIX. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS**

7      Neither party is currently aware of any interested non-party to this case.

8      **XX. OTHER MATTERS**

9      The Parties are not aware of any other matters that may facilitate the just, speedy, and  
10     inexpensive disposition of this matter.

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1 Dated: February 5, 2015

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